

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY A. CARL,

Plaintiff,

v.

COUNTY OF MUSKEGON,
et al.,

Defendants.

Case No. 1:11-cv-94

Hon. Robert J. Jonker

REPORT AND RECOMMENDATION

This matter is now before the court on defendant Nurse Christy Bowen's motion for summary judgment as to Count II (equal protection) (docket no. 183).

I. Discussion

The court addressed the other defendants' motions for summary judgment with respect to Count II in a Report and Recommendation issued on August 31, 2012. *See* Report and Recommendation (docket no. 283). On July 30, 2012, counsel notified the court that defendant Bowen had died during the pendency of this action. *See* Statement noting a party's death (docket no. 261). Because there was no person acting on behalf of this deceased defendant as of August 31, 2012, the court could not address her motion for summary judgment in the Report and Recommendation entered on that date. However, this issue was resolved on October 2, 2012, when the court substituted Leonard Bethke and Brendan Bowen, the Personal Representatives of the Estate of Christy D. Bowen, as the decedent's successor in this litigation. *See* docket no. 306. With the

substitution of the estate as a successor to defendant Bowen, this court can now address her motion for summary judgment.

After reviewing defendant Bowen's motion for summary judgment, the court concludes that her motion should be granted as to Count II (equal protection). In reaching this conclusion, the undersigned adopts the reasoning as set forth in the previous Report, which recommended granting the motions for summary judgment filed by defendants Sgt. Brian Bonstell (docket no. 165), Sgt. Theresa-Jones Burton (docket no. 180), Sheriff Dean Roesler (docket no. 186), Sgt. Todd Gilchrist (docket no. 190), Jail Administrator Lt. Mark Burns (docket no. 194), and Muskegon County (docket no. 198). *See* Report and Recommendation at §§ I and II (docket no. 283).

III. Recommendation

For the reasons set forth above, I respectfully recommend that defendant Bowen's motion for summary judgment (docket no. 183) be **GRANTED** with respect to Count II (the equal protection violation).

Dated: November 1, 2012

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be served and filed with the Clerk of the Court within fourteen (14) days after service of the report. All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to serve and file written objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).